

HOUSE BILL 1412

E4, P4

0lr3124
CF SB 972

By: **Delegates DeBoy, Barkley, Bromwell, G. Clagett, Costa, Glenn, Guzzone, Jones, Malone, McHale, Olszewski, Schuler, and Sophocleus**

Introduced and read first time: February 22, 2010

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Department of State Police – Collective Bargaining – Police Employees**

3 FOR the purpose of establishing collective bargaining rights for certain police
4 employees in the Department of State Police; specifying which police employees
5 are eligible to participate in the collective bargaining process; requiring certain
6 individuals or entities to designate one or more representatives to participate as
7 a party in collective bargaining; requiring the parties to meet at reasonable
8 times and engage in collective bargaining in good faith; requiring the exclusive
9 representative to make a certain notification of the intent to commence
10 negotiations on or before a certain date; requiring the parties to begin
11 negotiations on or before a certain date; requiring the parties to conclude
12 negotiations on or before a certain date for inclusion in a certain budget request;
13 requiring the parties to conclude negotiations on or before a certain date for
14 certain items; requiring the Governor to include certain amounts in the budget
15 bill; authorizing a party under certain circumstances to provide written notice
16 that an impasse has been reached and request that a fact finder be employed to
17 resolve the issues; providing for the employment of a fact finder; establishing
18 the powers and duties of the fact finder; authorizing the fact finder to receive
19 and consider certain evidence; requiring the written recommendations of the
20 fact finder to be delivered to certain parties; establishing that, under certain
21 circumstances, certain written recommendations of the fact finder are binding
22 on certain parties; authorizing a party to file a motion to vacate or modify the
23 fact finder's recommendation in a certain manner under certain circumstances;
24 authorizing a court to vacate or modify the fact finder's recommendation in a
25 certain manner under certain circumstances; authorizing the parties to modify
26 certain terms by mutual agreement; authorizing the fact finder to stop or delay
27 impasse procedures under certain circumstances; providing that impasse
28 procedures may not be stopped or delayed because of certain acts; authorizing
29 the parties to reach a certain voluntary settlement; prohibiting a party from
30 altering certain conditions of employment during a certain period of time except

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 under certain circumstances; requiring a memorandum of understanding to be
2 executed in a certain manner; requiring certain matters to be recommended to
3 the General Assembly for approval or appropriation of funds; providing that
4 negotiations for a memorandum of understanding are considered closed
5 sessions; providing for the application of this Act; defining a certain term; and
6 generally relating to collective bargaining of police employees in the
7 Department of State Police.

8 BY adding to

9 Article – Public Safety

10 Section 2–419

11 Annotated Code of Maryland

12 (2003 Volume and 2009 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article – Public Safety**

16 **2–419.**

17 **(A) IN THIS SECTION, “NONCOMMISSIONED RANK” HAS THE MEANING**
18 **STATED IN § 2–101 OF THIS TITLE.**

19 **(B) THIS SECTION APPLIES ONLY TO SWORN POLICE EMPLOYEES OF**
20 **THE DEPARTMENT AT A NONCOMMISSIONED RANK.**

21 **(C) THE FOLLOWING INDIVIDUALS OR ENTITIES SHALL DESIGNATE ONE**
22 **OR MORE REPRESENTATIVES TO PARTICIPATE AS A PARTY IN COLLECTIVE**
23 **BARGAINING:**

24 **(1) ON BEHALF OF THE STATE, THE GOVERNOR; AND**

25 **(2) ON BEHALF OF THE EXCLUSIVE EMPLOYEE REPRESENTATIVE,**
26 **THE PRESIDENT OF THE EXCLUSIVE REPRESENTATIVE.**

27 **(D) (1) THE PARTIES SHALL MEET AT REASONABLE TIMES AND**
28 **ENGAGE IN COLLECTIVE BARGAINING IN GOOD FAITH TO CONCLUDE A WRITTEN**
29 **MEMORANDUM OF UNDERSTANDING OR OTHER WRITTEN UNDERSTANDING.**

30 **(2) THE EXCLUSIVE REPRESENTATIVE SHALL NOTIFY THE**
31 **GOVERNOR OR THE GOVERNOR’S REPRESENTATIVE OF THE EXCLUSIVE**
32 **REPRESENTATIVE’S INTENTION TO BEGIN NEGOTIATIONS ON OR BEFORE JULY**
33 **1.**

1 **(3) THE PARTIES SHALL BEGIN NEGOTIATIONS ON OR BEFORE**
2 **SEPTEMBER 1.**

3 **(E) (1) THE PARTIES SHALL MAKE EVERY REASONABLE EFFORT TO**
4 **CONCLUDE NEGOTIATIONS ON OR BEFORE OCTOBER 15 FOR INCLUSION BY THE**
5 **DEPARTMENT IN ITS BUDGET REQUEST TO THE GOVERNOR.**

6 **(2) (I) THE PARTIES SHALL CONCLUDE NEGOTIATIONS**
7 **BEFORE JANUARY 1 FOR ANY ITEM REQUIRING AN APPROPRIATION OF FUNDS**
8 **FOR THE FISCAL YEAR THAT BEGINS ON THE FOLLOWING JULY 1.**

9 **(II) IN THE BUDGET BILL SUBMITTED TO THE GENERAL**
10 **ASSEMBLY, THE GOVERNOR SHALL INCLUDE ANY AMOUNTS IN THE BUDGET OF**
11 **THE DEPARTMENT REQUIRED TO ACCOMMODATE ANY ADDITIONAL COST**
12 **RESULTING FROM THE NEGOTIATIONS, INCLUDING THE ACTUARIAL IMPACT OF**
13 **ANY LEGISLATIVE CHANGES TO ANY OF THE STATE PENSION OR RETIREMENT**
14 **SYSTEMS THAT ARE REQUIRED AS A RESULT OF THE NEGOTIATIONS FOR THE**
15 **FISCAL YEAR BEGINNING THE FOLLOWING JULY 1 IF THE LEGISLATIVE**
16 **CHANGES HAVE BEEN NEGOTIATED TO BECOME EFFECTIVE IN THAT FISCAL**
17 **YEAR.**

18 **(F) (1) THIS SUBSECTION APPLIES ONLY TO THE NEGOTIATION OF A**
19 **NEW MEMORANDUM OF UNDERSTANDING OR THE NEGOTIATION OF A**
20 **SUCCESSOR TO AN EXISTING MEMORANDUM OF UNDERSTANDING AND DOES**
21 **NOT APPLY TO A DISPUTE OVER A PROVISION IN AN EXISTING MEMORANDUM OF**
22 **UNDERSTANDING.**

23 **(2) IF THE PARTIES HAVE CONCLUDED AT LEAST FIVE**
24 **COLLECTIVE BARGAINING SESSIONS AND THE PARTIES HAVE REACHED A POINT**
25 **AT WHICH FURTHER NEGOTIATION APPEARS TO BE UNPRODUCTIVE BEFORE**
26 **OCTOBER 25, EITHER PARTY MAY DECLARE THAT AN IMPASSE HAS BEEN**
27 **REACHED BY:**

28 **(I) PROVIDING WRITTEN NOTICE TO THE OTHER PARTY**
29 **THAT AN IMPASSE HAS BEEN REACHED; AND**

30 **(II) REQUESTING THAT A FACT FINDER BE EMPLOYED TO**
31 **RESOLVE THE ISSUES.**

32 **(3) THE FACT FINDER SHALL BE EMPLOYED NO LATER THAN**
33 **NOVEMBER 1.**

34 **(4) A FACT FINDER SHALL BE A NEUTRAL PARTY APPOINTED BY**
35 **ALTERNATE STRIKING FROM A LIST BY THE PARTIES PROVIDED:**

1 **(I) BY THE FEDERAL MEDIATION AND CONCILIATION**
2 **SERVICE; OR**

3 **(II) UNDER THE LABOR ARBITRATION RULES OF THE**
4 **AMERICAN ARBITRATION ASSOCIATION.**

5 **(5) THE COSTS OF EMPLOYING A FACT FINDER SHALL BE SHARED**
6 **EQUALLY BY THE PARTIES.**

7 **(6) THE FACT FINDER:**

8 **(I) MAY ONLY ARBITRATE ITEMS THAT WERE THE SUBJECT**
9 **OF THE MOST RECENT COLLECTIVE BARGAINING NEGOTIATIONS AND ARE**
10 **PRESENTED TO THE FACT FINDER BY EITHER PARTY AS DISPUTED ITEMS;**

11 **(II) MAY GIVE NOTICE AND HOLD HEARINGS IN**
12 **ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT;**

13 **(III) MAY ADMINISTER OATHS AND TAKE TESTIMONY AND**
14 **OTHER EVIDENCE;**

15 **(IV) MAY ISSUE SUBPOENAS;**

16 **(V) SHALL ARBITRATE DISPUTED ITEMS INDIVIDUALLY AND**
17 **IS NOT REQUIRED TO SELECT THE FINAL OFFER OF EITHER PARTY IN ITS**
18 **ENTIRETY; AND**

19 **(VI) BEFORE NOVEMBER 20, SHALL MAKE A WRITTEN**
20 **RECOMMENDATION REGARDING WAGES, HOURS, WORKING CONDITIONS, AND**
21 **ANY OTHER TERMS OR CONDITIONS OF EMPLOYMENT THAT MAY BE IN DISPUTE.**

22 **(7) THE FACT FINDER MAY RECEIVE AND CONSIDER EVIDENCE**
23 **REGARDING:**

24 **(I) THE HISTORY OF CURRENT AND PRIOR NEGOTIATIONS**
25 **BETWEEN THE PARTIES;**

26 **(II) ANY STIPULATIONS OF THE PARTIES;**

27 **(III) THE WAGES, HOURS, WORKING CONDITIONS, AND ANY**
28 **OTHER TERMS OR CONDITIONS OF EMPLOYMENT OF OTHER LAW ENFORCEMENT**
29 **OFFICERS IN THE STATE BASED ON AN EXISTING OR A PREVIOUSLY**
30 **NEGOTIATED MEMORANDUM OF UNDERSTANDING;**

1 (IV) THE WAGES, HOURS, WORKING CONDITIONS, AND ANY
2 OTHER TERMS OR CONDITIONS OF EMPLOYMENT OF SIMILAR LAW
3 ENFORCEMENT OFFICERS IN OTHER JURISDICTIONS BASED ON AN EXISTING OR
4 A PREVIOUSLY NEGOTIATED MEMORANDUM OF UNDERSTANDING;

5 (V) THE OVERALL COMPENSATION PAID TO THE POLICE
6 EMPLOYEES THAT ARE THE SUBJECT OF THE FACT FINDING, INCLUDING DIRECT
7 WAGE COMPENSATION, OVERTIME AND PREMIUM PAY, VACATIONS, HOLIDAYS,
8 OTHER LEAVE, INSURANCE, PENSIONS, MEDICAL BENEFITS, AND APPAREL
9 FURNISHED BY THE EMPLOYER;

10 (VI) THE ABILITY OF THE EMPLOYER TO PAY, INCLUDING
11 THE LIMITATIONS PLACED ON THE EMPLOYER'S USE OF SPECIAL FUNDS BY
12 FEDERAL OR STATE LAW;

13 (VII) THE COST OF LIVING IN THE STATE, INCLUDING ANY
14 RECENT CHANGES TO THE COST OF LIVING;

15 (VIII) THE NEED TO ESTABLISH FAIR AND REASONABLE
16 CONDITIONS IN CONSIDERATION OF A POLICE EMPLOYEE'S JOB
17 QUALIFICATIONS AND RESPONSIBILITIES;

18 (IX) THE INTERESTS AND WELFARE OF THE RESIDENTS OF
19 THE STATE;

20 (X) THE INTERESTS AND WELFARE OF THE POLICE
21 EMPLOYEES; AND

22 (XI) ANY OTHER INFORMATION THAT THE FACT FINDER
23 CONSIDERS NECESSARY TO WEIGH FULLY THE FINAL PROPOSED OFFERS OF
24 EACH PARTY.

25 (8) THE WRITTEN RECOMMENDATION OF THE FACT FINDER
26 SHALL BE DELIVERED TO THE GOVERNOR, THE EXCLUSIVE REPRESENTATIVE,
27 THE PRESIDENT OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF
28 DELEGATES BY THE SECRETARY ON OR BEFORE DECEMBER 1.

29 (9) THE WRITTEN RECOMMENDATION OF THE FACT FINDER ON
30 ANY ITEM NOT REQUIRING AN APPROPRIATION OF FUNDS OR LEGISLATIVE
31 APPROVAL IS:

32 (I) FINAL AND BINDING ON THE EXCLUSIVE
33 REPRESENTATIVE; AND

1 **(II) FINAL AND BINDING ON THE GOVERNOR.**

2 **(10) THE WRITTEN RECOMMENDATION OF THE FACT FINDER ON**
3 **ANY ITEM REQUIRING AN APPROPRIATION OF FUNDS OR LEGISLATIVE**
4 **APPROVAL IS:**

5 **(I) FINAL AND BINDING ON THE EXCLUSIVE**
6 **REPRESENTATIVE; AND**

7 **(II) UNLESS REJECTED BY THE GENERAL ASSEMBLY, FINAL**
8 **AND BINDING ON THE GOVERNOR.**

9 **(11) (I) THE RECOMMENDATION OF A FACT FINDER IS NOT**
10 **BINDING ON THE GENERAL ASSEMBLY.**

11 **(II) IF THE GENERAL ASSEMBLY DOES NOT APPROVE THE**
12 **FUNDS NECESSARY TO IMPLEMENT ANY PROVISION OF A COLLECTIVE**
13 **BARGAINING AGREEMENT THAT REQUIRES AN APPROPRIATION OF FUNDS, THE**
14 **PROVISION IS NOT BINDING ON THE STATE OR THE DEPARTMENT.**

15 **(12) (I) EITHER PARTY MAY FILE A MOTION TO VACATE OR**
16 **MODIFY ANY PART OF THE RECOMMENDATION OF A FACT FINDER IN A CIRCUIT**
17 **COURT WITHIN 30 DAYS AFTER THE DATE THE FACT FINDER ISSUES THE**
18 **RECOMMENDATION.**

19 **(II) A MOTION TO VACATE OR MODIFY A RECOMMENDATION**
20 **FILED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL IDENTIFY THE**
21 **SPECIFIC ISSUE OR ISSUES IN THE RECOMMENDATION THAT THE COURT IS**
22 **BEING ASKED TO VACATE OR MODIFY.**

23 **(III) A PARTY FILING A MOTION TO VACATE OR MODIFY A**
24 **RECOMMENDATION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS**
25 **RESPONSIBLE FOR THE REASONABLE ATTORNEY'S FEES OF THE OTHER PARTY**
26 **IF THE RECOMMENDATION OF THE FACT FINDER IS UPHELD.**

27 **(13) ANY PART OF THE RECOMMENDATION OF A FACT FINDER**
28 **THAT IS NOT SUBJECT TO A MOTION TO VACATE OR MODIFY UNDER PARAGRAPH**
29 **(12)(I) OF THIS SUBSECTION IS FINAL AND BINDING ON THE PARTIES.**

30 **(14) A COURT, AFTER A HEARING, MAY VACATE OR MODIFY ANY**
31 **PART OF THE FACT FINDER'S RECOMMENDATION ONLY IF THE COURT FINDS**
32 **THAT SUBSTANTIAL RIGHTS OF A PARTY HAVE BEEN PREJUDICED BECAUSE THE**
33 **RECOMMENDATION IS:**

1 **(I) IN VIOLATION OF THE MARYLAND CONSTITUTION OR**
2 **THE UNITED STATES CONSTITUTION;**

3 **(II) IN EXCESS OF THE STATUTORY AUTHORITY OF THE**
4 **FACT FINDER;**

5 **(III) MADE ON UNLAWFUL PROCEDURE;**

6 **(IV) CONTRARY TO EXISTING STATE OR FEDERAL LAW;**

7 **(V) CLEARLY NOT SUPPORTED BY THE EVIDENCE ON**
8 **RECORD; OR**

9 **(VI) ARBITRARY, CAPRICIOUS, OR CHARACTERIZED BY**
10 **ABUSE OF DISCRETION OR BY A CLEARLY UNWARRANTED EXERCISE OF**
11 **DISCRETION.**

12 **(G) (1) ANY REQUIRED TIME FRAME PROVIDED IN THIS SECTION MAY**
13 **BE MODIFIED BY MUTUAL AGREEMENT OF THE PARTIES.**

14 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IF THE**
15 **PARTIES HAVE NOT AGREED TO MODIFY A TIME FRAME UNDER PARAGRAPH (1)**
16 **OF THIS SUBSECTION AND EITHER PARTY ACTS TO DELAY OR FAILS OR REFUSES**
17 **TO PARTICIPATE IN THE IMPASSE PROCEDURE OF SUBSECTION (F) OF THIS**
18 **SECTION, THE DELAY, FAILURE, OR REFUSAL TO PARTICIPATE DOES NOT STOP**
19 **OR OTHERWISE DELAY THE IMPASSE PROCEDURE.**

20 **(3) THE FACT FINDER MAY STOP OR DELAY THE IMPASSE**
21 **PROCEDURE BECAUSE OF AN UNFORESEEN EMERGENCY.**

22 **(4) IN THE ABSENCE OF AN ORDER TO STOP OR DELAY THE**
23 **IMPASSE PROCEDURE UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE**
24 **IMPASSE PROCEDURE SHALL CONTINUE AS THOUGH ALL PARTIES WERE**
25 **PARTICIPATING.**

26 **(H) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT THE PARTIES**
27 **FROM REACHING A VOLUNTARY SETTLEMENT ON ANY UNRESOLVED ISSUES AT**
28 **ANY TIME BEFORE OR AFTER THE FACT FINDER ISSUES A RECOMMENDATION.**

29 **(I) (1) THIS SUBSECTION APPLIES ONLY WHEN EITHER PARTY HAS**
30 **PROVIDED WRITTEN NOTIFICATION OF AN IMPASSE UNDER SUBSECTION**
31 **(F)(2)(I) OF THIS SECTION.**

1 **(2) BEFORE THE FACT FINDER HAS ISSUED A RECOMMENDATION,**
2 **A PARTY MAY ALTER ONLY THE EXISTING WAGES, HOURS, WORKING**
3 **CONDITIONS, OR ANY OTHER TERMS OR CONDITIONS OF EMPLOYMENT WITH**
4 **THE CONSENT OF THE OTHER PARTY.**

5 **(3) PROVIDING CONSENT TO ALTER CONDITIONS OF**
6 **EMPLOYMENT UNDER PARAGRAPH (2) OF THIS SUBSECTION DOES NOT AFFECT**
7 **THE CONSENTING PARTY'S RIGHTS OR POSITION IN AN IMPASSE PROCEDURE.**

8 **(J) (1) A MEMORANDUM OF UNDERSTANDING THAT INCORPORATES**
9 **ALL MATTERS OF AGREEMENT REACHED BY THE PARTIES SHALL BE EXECUTED**
10 **BY THE EXCLUSIVE REPRESENTATIVE AND, FOR A MEMORANDUM OF**
11 **UNDERSTANDING RELATING TO THE STATE, THE GOVERNOR OR THE**
12 **GOVERNOR'S DESIGNEE.**

13 **(2) TO THE EXTENT THESE MATTERS REQUIRE LEGISLATIVE**
14 **APPROVAL OR THE APPROPRIATION OF FUNDS, THE MATTERS SHALL BE**
15 **RECOMMENDED TO THE GENERAL ASSEMBLY FOR APPROVAL OR FOR THE**
16 **APPROPRIATION OF FUNDS.**

17 **(K) NEGOTIATIONS FOR A MEMORANDUM OF UNDERSTANDING SHALL**
18 **BE CONSIDERED CLOSED SESSIONS UNDER § 10-508 OF THE STATE**
19 **GOVERNMENT ARTICLE.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2010.